

## **EXHIBIT 5**



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March 26, 2020

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**Re: Priorities USA Action Advertisement**

Dear Station Manager:

Our firm is counsel to Priorities USA Action. We write in response to the letter you recently received from counsel to Donald Trump for President, Inc. (the “Trump campaign”), urging you to censor an advertisement sponsored by our client that is critical of President Trump’s handling of the COVID-19 pandemic. Their letter calls our client’s ad “false, misleading, and deceptive.” But our client’s advertisement is entirely truthful—in fact, the ad uses only Mr. Trump’s own words. Our client has a right to inform the public of what our leaders do and say, and the American people have a right to hear it.

The Trump campaign alleges that our client’s ad is false, misleading, and deceptive because it “stitched together fragments from multiple speeches by President Trump to fraudulently and maliciously imply that President Trump called the coronavirus outbreak a ‘hoax.’” First, the ad does not manipulate clips to make it seem like Mr. Trump said these words—he did, just like he said every other word in the ad. The complaint correctly states that the ad splices together audio clips. The ad is a series of audio clips, just like countless other ads. That’s the whole concept. Viewers understand that the ad compiles multiple clips, for many reasons including the fact that Mr. Trump’s tone of voice discernibly changes between the clips. This presentation is common in ads and is not misleading.

Our client’s ad does not assert that Mr. Trump said the precise sentence, “The coronavirus, this is their new hoax.” This part of the ad features two noticeably distinct audio clips that in fact sound quite different. However, having them adjoining is not misleading, because they are part of the same statement by the President. The advertisement merely shortens Mr. Trump’s statement to remove extraneous material.

The full quote from Mr. Trump is as follows:

Now the Democrats are politicizing the coronavirus. You know that, right? Coronavirus. They’re politicizing it. We did one of the great jobs. You say, ‘How’s President Trump doing?’ They go, ‘Oh, not good, not good.’ They have no clue. They don’t have any clue. They can’t even count their votes in Iowa, they can’t even count. No they can’t. They can’t count their votes.

One of my people came up to me and said, ‘Mr. President, they tried to beat you on Russia, Russia, Russia. That didn’t work out

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too well. They couldn't do it. They tried the impeachment hoax. That was on a perfect conversation. They tried anything, they tried it over and over, they've been doing it since you got in. It's all turning, they lost, it's all turning. Think of it. Think of it. And this is their new hoax.

The letter of complaint argues that this edit was misleading, and that the word "hoax" was not referring to Covid-19 itself. In fact, Mr. Trump *was* talking about Covid-19 at a campaign rally when he said "this is their new hoax."<sup>1</sup> Many, many news outlets and publications have interpreted Mr. Trump to have claimed that the outbreak was a hoax perpetuated by Democrats. For example:

- "Trump rallies his base to treat coronavirus as a 'hoax.'"<sup>2</sup>
- "Trump called the coronavirus 'their new hoax.'"<sup>3</sup>
- "During his speech, Trump described the coronavirus outbreak as the Democrats' 'new hoax.'"<sup>4</sup>
- Mr. Trump "downplay[ed] the seriousness of the situation [and] mock[ed] political opponents for hyping a 'hoax.'"<sup>5</sup>
- Mr. Trump faced "criticism for using the word 'hoax' in describing the outbreak."<sup>6</sup>
- "Trump calls coronavirus Democrats' 'new hoax.'"<sup>7</sup>

It is clear that Mr. Trump was referring to the perceived severity of the coronavirus outbreak as a "hoax."

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<sup>1</sup> See President Trump Campaign Event in North Charleston, South Carolina, C-SPAN, <https://www.c-span.org/video/?469663-1/president-trump-campaign-event-north-charleston-south-carolina&start=403>.

<sup>2</sup> Trump rallies his base to treat coronavirus as a 'hoax', Politico (Feb. 28, 2020), <https://www.politico.com/news/2020/02/28/trump-south-carolina-rally-coronavirus-118269>.

<sup>3</sup> *Id.*

<sup>4</sup> Trump says coronavirus is Democrats' 'new hoax' in raucous South Carolina rally ahead of primary, USA Today (Feb. 28, 2020), <https://www.usatoday.com/story/news/politics/elections/2020/02/28/trump-hold-south-carolina-rally-before-democratic-primary-election/4887015002/>.

<sup>5</sup> Trump's own words contradict claim he's always viewed coronavirus as 'very serious', ABC News (March 19, 2020), <https://abcnews.go.com/Politics/trumps-words-contradict-claim-viewed-coronavirus/story?id=69662788>.

<sup>6</sup> Trump fends off criticism of 'hoax' remark after first US coronavirus death, The Guardian (Feb. 29, 2020), <https://www.theguardian.com/world/2020/feb/29/joe-biden-trump-coronavirus-hoax-claim>.

<sup>7</sup> Trump calls coronavirus Democrats' 'new hoax', NBC News (Feb. 28, 2020), <https://www.nbcnews.com/politics/donald-trump/trump-calls-coronavirus-democrats-new-hoax-n1145721>.

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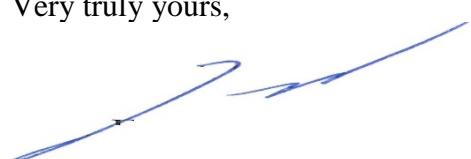
And if the President did indeed mean to refer to the Democrats' response, **the words omitted by the advertisement do not make that any clearer.** In the full quote above, Mr. Trump says "Coronavirus. They're politicizing it. We did one of the great jobs." He then goes on to discuss other subjects, and then argues that "it's all turning. Think of it. Think of it. And this is their new hoax." If he meant to refer to the argument that his administration did not perform well as the "hoax" and not Covid-19 itself, that is not made plain by his full words. The only noun that "this" could refer to is "coronavirus."

As the president and a candidate for public office, Mr. Trump is a public figure. He has a guaranteed right of reasonable access to advance and explain his own record and views on issues of public importance. Despite what he might think, that group has no right to silence Priorities USA Action as it opposes Mr. Trump's views, criticizes his record on policy, and educates the public about his actions. Our client's ability to speak on such matters of public importance is at the heart of the First Amendment's protections. *Time, Inc. v. Hill*, 385 U.S. 374 (1967); *New York Times v. Sullivan*, 376 U.S. 254 (1964).

This is why the Federal Communications Commission has held that stations best meet their public interest obligations "by presenting contrasting views" and encouraging "robust, wide-open debate." *In re Complaint by Hon. Ronald Reagan*, 38 F.C.C.2d 314 (1972). It has consistently rejected invitations by political figures to "judge the truth or falsity of material being broadcast on either side of a currently controversial issue." *Id; accord In re Complaint by Alan S. Burstein*, 43 F.C.C.2d 590 (1973); *In re Complaint by Patton Echols*, 43 F.C.C.2d 479 (1973).

There is no genuine dispute as to the accuracy of the claims in this advertisement. It is not false, deceptive, or misleading. By pressuring you to remove this ad, the Trump campaign is asking you to blatantly ignore Mr. Trump's own words and his administration's actions. Your decision to accept the advertisement should remain undisturbed. Please contact us promptly at (202) 434-1616 before this advertisement's schedule on your station changes in any way.

Very truly yours,



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